

EXHIBIT A

E-FILED

10-12-2021, 15:54

**Scott G. Weber, Clerk
Clark County**

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7
8 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
9 **FOR THE COUNTY OF CLARK**

10 **JOSEPH GILLUM dba J&B**
11 **LOGSTACKERS,**

12 **Plaintiff,**

13 **v.**

14 **THE BURLINGTON INSURANCE**
15 **COMPANY,**

16 **Defendant.**

Case No. 21-2-01944-06

COMPLAINT

Breach of Insurance Contract
Declaratory Judgment

DEMAND FOR JURY TRIAL

17 **Plaintiff Joseph Gillum dba J&B Logstackers ("J&B") alleges:**

18 **JURISDICTION**

19 **1.**

20 **J&B is a domestic business corporation registered and authorized to do business in the**
21 **State of Washington.**

22 **2.**

23 **Defendant The Burlington Insurance Company ("Burlington") is a North Carolina**
24 **corporation and conducting regular and sustained business activity in Washington, including**
25 **in the County of Clark.**

26 **///**

Page 1 - COMPLAINT

CHENOWETH LAW GROUP, PC
510 SW Fifth Avenue, Fourth Floor
Portland, OR 97204
Telephone: (503) 221-7958
Facsimile: (503) 221-2182
Email: bdc@chenowethlaw.com

3.

The Superior Court of Clark County, Washington is proper venue for this action pursuant to RCW 4.12.020 and RCW 4.12.025 because Burlington transacts business in Clark County, Washington.

PLAINTIFF'S FIRST CLAIM FOR RELIEF
(Breach of Insurance Contract)

4.

J&B incorporates paragraphs 1 through 3 above, and further alleges:

5.

From approximately July 21, 2019 to present, Burlington provided liability insurance coverage to J&B under policy number 605BW53136 ("the Policy"). The Policy provides coverage for defense of complaints against J&B in which liability for property damage is alleged.

6.

On or about February 2, 2021, Arch Insurance Company, as subrogee of Douglas County, Inc., filed a complaint against J&B in Multnomah County Circuit Court, Oregon ("the Complaint"). A true copy of the Complaint is attached as Exhibit 1. J&B tendered the Complaint to Burlington for defense on or about March 16, 2021, but Burlington refused to defend J&B.

7.

Burlington has denied coverage and therefore breached the contract.

8.

J&B has incurred and continues to incur defense costs related to the defense of the Complaint.

///

1 9.

2 J&B has performed all conditions precedent required under the policies or such
3 conditions have been waived, excused, and/or discharged.

4 10.

5 As a result of Burlington's breach, J&B has been damaged in an amount to be proven
6 at trial. Burlington is liable for prejudgment interest on the J&B's damages pursuant to RCW
7 4.56.110 and to the fullest extent of the law.

8 11.

9 J&B is entitled to reasonable attorney fees related to the pursuit of this cause.

10 **PLAINTIFF'S SECOND CLAIM FOR RELIEF**
11 **(Declaratory Judgment)**

12 12.

13 J&B realleges and incorporates by reference the allegations in paragraphs 1 through
14 11, and further alleges:

15 13.

16 There has arisen and now exists an actual and substantial controversy between J&B
17 and Burlington relating to Burlington's duty to defend the Complaint and its liability for future
18 defense costs under the Policy.

19 14.

20 J&B is damaged by this controversy in that it has been, and will be, required to expend
21 funds to pay defense costs that are covered under the Policy. J&B's damages will continue
22 until the controversy is resolved.

23 15.

24 Pursuant to RCW § 7.24.020, J&B is entitled to declaratory judgment against
25 Burlington that: (1) Burlington has a duty to defend J&B from the Complaint, and (2) that
26 Burlington is liable for all reasonable defense costs incurred by J&B.

1 WHEREFORE, J&B prays for relief as follows:

2 a. Judgment for J&B against Burlington in an amount to be determined at trial
3 plus prejudgment interest;

4 b. Declaratory judgment that (i) Burlington has a duty to defend the Complaint;
5 (ii) Burlington must pay J&B future defense costs as awarded by supplemental judgment; and
6 (iii) Burlington must pay for all reasonable attorney fees and costs incurred related to this
7 action;

8 c. Costs and attorney fees; and

9 d. Any other relief the Court deems equitable and proper.

10 DATED this 12th day of October, 2021

11 CHENOWETH LAW GROUP, PC

12 s/ Brian D. Chenoweth

13 Brian D. Chenoweth, WSBA #25877

14 510 SW Fifth Ave., Fourth Floor

15 Portland, OR 97204

16 Phone: (503) 221-7958

17 Fax: (503) 221-2182

18 Email: bdc@chenowethlaw.com

19 *Attorney for Plaintiff*

2/3/2021 9:22 AM
21CV03995

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

ARCH INSURANCE COMPANY as
subrogee of Douglas County, Inc., a foreign
corporation,

Plaintiff,

v.

J & B LOGSTACKERS, assumed business
name of Joseph Gillum, JOSEPH GILLUM,
an individual, and UMPQUA VALLEY FIRE
SERVICES, INC., a domestic corporation

Defendants.

Case No.

**COMPLAINT FOR NEGLIGENCE,
BREACH OF CONTRACT, BREACH OF
WARRANTY**

Filing Fee: \$594.00

Fee Statute: ORS 21.160(1)(c)

Claim Amount: \$351,046.79

**NOT SUBJECT TO MANDATORY
ARBITRATION**

COMPLAINT – CIVIL ACTION

I.

Plaintiff, Arch Insurance Company as subrogee of Douglas County, Inc. ("Arch"), by and
through its attorneys, Smith Freed Eberhard P.C., hereby file this Complaint against Defendants,
and in support thereof, allege as follows:

Page 1 – COMPLAINT FOR NEGLIGENCE, BREACH OF CONTRACT, BREACH OF
WARRANTY 4533MI

SMITH FREED EBERHARD P.C.
111 SW Columbia Street, Ste. 800
Portland, Oregon 97201
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PARTIES

2.

Arch is a corporation duly organized and existing under the laws of the State of Missouri, and at all times relevant hereto, was duly authorized to conduct business in the State of Oregon.

3.

At all times material hereto, Arch provided insurance coverage to Arch's insured, Douglas County, Inc. ("Douglas County") for its business personal property that was principally used at its facility located at 398 Del Rio Road, Winchester, OR 97495 ("the subject premises"), pursuant to Policy No. DLIML2681600.

4.

Upon information and belief, J & B Logstackers ("J & B") is domestic assumed business name organized and existing under the laws of the State of Oregon, with a principal place of business located at 4979 Buckhorn Road, Roseburg OR 97470 and was authorized to conduct business in the State of Oregon.

5.

Upon information and belief, Joseph Gillum ("Gillum") is the registrant/owner of the J & B Logstackers assumed business name and utilizes the assumed business name of J & B Logstackers to conduct business within the State of Oregon.

6.

Upon information and belief, Umpqua Valley Fire Services Inc. ("Umpqua") is a domestic corporation duly organized and existing under the laws of the State of Oregon, with a principal place of business located at 1353 SE Pine Street, Roseburg, OR 97470, and was authorized to conduct business in the State of Oregon.

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JURISDICTION AND VENUE

7.

Jurisdiction and venue in this Court is proper because Defendants all regularly conduct business in the State of Oregon and, in particular, within Multnomah County.

FACTS

8.

On or about November 28, 2017, Douglas County arranged for the purchase of a Wagner L80F log loader machine ("the machine") from J & B, who sold and remanufactured the machine for Douglas County.

9.

Sometime in November 2018, J & B delivered the machine to Douglas County.

10.

On or about February 21, 2020, Umpqua performed a full service and inspection call on the machine, which included evaluating the efficacy and propriety of the fire suppression system.

11.

On or about February 26, 2020, a fire erupted in the machine, causing catastrophic damage ("the incident").

12.

The fire suppression system to the machine never activated during the incident.

13.

Upon information and belief, the fire suppression system was immediately consumed by the fire due to the absence of heat-retardant sleeves that were required to be placed on the

Page 3 – COMPLAINT FOR NEGLIGENCE, BREACH OF CONTRACT, BREACH OF WARRANTY 4533MI

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1 relevant fire hose(s), including, without limitation, the actuation line(s) involved in activating the
2 extinguishing agent designed to suppress the fire.

3
4 14.

5 Upon information and belief, J & B never installed and/or provided these heat-retardant
6 sleeves during the remanufacturing, sale, and/or upon or after delivery of the machine.

7 15.

8 Umpqua never confirmed and/or advised of the absence (and implications thereof) of
9 these heat-retardant sleeves on the fire suppression system to anyone.

10 16.

11 The fire in the machine caused significant damages, and the failure of the fire suppression
12 system to activate ensured that the machine was a total loss, resulting in damages that exceeded
13 \$351,046.79.
14

15 17.

16 Pursuant to the aforementioned Policy, Arch made payments in excess of \$351,046.79 to
17 Douglas County to indemnify it for the damage to the subject property.

18 18.

19 Pursuant to the terms of the Policy and applicable law, Arch is now subrogated to the
20 rights and claims of its insured against parties responsible for the aforementioned losses and
21 resulting damages to the extent of payments made to its insured.
22

23 ///

24
25 ///

26
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WARRANTY 4533MI

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COUNT I – NEGLIGENCE
(As to J & B and Gillum)

19.

Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as if fully set forth at length herein.

20.

In remanufacturing and selling the machine, J & B and/or Gillum had a duty to ensure it was fit to be used and that all its component parts were in proper working order, including the fire suppression system and its necessary heat-retardant sleeves; in fact, J & B certified the propriety of the entire fire suppression system at the time of sale and delivery.

21.

J & B and/or Gillum breached these duties owed to Douglas County by not ensuring that the fire suppression system was properly installed and/or contained all necessary heat-retardant sleeves and/or that the detection line(s) was not fashioned with black zip ties.

22.

The negligent, careless, and reckless acts and/or omissions of J & B and/or Gillum, acting by and through their agents, servants, representatives, and/or employees, caused and/or exacerbated the fire and/or damages in the following ways:

- a. Failing to ensure that all relevant fire hoses and detection lines for the fire suppression system contained heat-retardant sleeves;
- b. Failing to ensure that all relevant fire hoses and detection lines to the machine were properly fastened with black zip ties;
- c. Failing to advise or warn Douglas County that the fire suppression system did not properly contain either heat-retardant sleeves and/or was fastened by black zip ties;

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- 1 d. Improperly certifying the fire suppression system as being properly
2 installed and reasonably fit for its intended use; and
3 e. Otherwise failing to act in a proper manner and use due care under the
4 circumstances with regard to the remanufacturing, selling, certifying
and/or delivery of the machine.

5 23.

6 Pursuant to its Policy with Douglas County, Arch paid in excess of \$351,046.79 for
7 damages stemming from the February 26, 2020 fire to the machine.

8 **COUNT II – BREACH OF CONTRACT**
9 **(As to J & B and Gillum)**

10 24.

11 Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs
12 as if fully set forth at length herein.

13 25.

14 By sales agreement, dated November 28, 2017, J & B and/or Gillum provided for the sale
15 and remanufacturing of the machine. A true and correct copy of this sales agreement is attached
16 hereto and marked as Exhibit A.

17 26.

18 In failing to undertake the steps necessary as the seller and remanufacturer of the
19 machine, especially with regard to ensuring that all component parts were in proper working
20 order, including the fire suppression system, J & B and/or Gillum breached its contractual and
21 statutory obligations to Douglas County.

22 27.

23 Based upon J & B and/or Gillum's breach of the contract with Douglas County, Plaintiff
24 incurred significant damages.

25 Page 6 – COMPLAINT FOR NEGLIGENCE, BREACH OF CONTRACT, BREACH OF
26 WARRANTY 4533.MI

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1 28.

2 Pursuant to its Policy with Douglas County, Arch paid in excess of \$351,046.79 for
3 damages stemming from the February 26, 2020 fire to the machine.

4 **COUNT III – BREACH OF EXPRESSED OR IMPLIED WARRANTY**
5 **(As to J & B and Gillum)**

6 29.

7 Plaintiff incorporates by reference the allegations contained in the preceding paragraphs
8 as if fully set forth at length herein.

9 30.

10 J & B and/or Gillum warranted that the machine was reasonably fit for its intended use,
11 when, in fact, the machine was not reasonably fit for such use, during the time the machine was
12 sold and used by Douglas County thereafter, which included the date of the fire, February 26,
13 2020.

14 31.

15 J & B and/or Gillum breached their expressed and implied warranty(ies) for the reasons
16 set forth in paragraph 22, which is incorporated herein by reference.

17 32.

18 In failing to undertake the steps necessary as the seller and remanufacturer of the
19 machine, including ensuring that all component parts were in proper working order, especially
20 the fire suppression system, J & B and/or Gillum breached its contractual and statutory
21 obligations to Douglas County, including but not limited to the relevant implied warranties of
22 merchantability and warranties of fitness for this particular purpose provided under the Uniform
23 Commercial Code.
24
25
26

Page 7 – COMPLAINT FOR NEGLIGENCE, BREACH OF CONTRACT, BREACH OF
WARRANTY 4533M1

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1 33.

2 Pursuant to its Policy with Douglas County, Arch paid in excess of \$351,046.79 for
3 damages stemming from the February 26, 2020 fire to the machine.
4

5 **COUNT IV – NEGLIGENCE**
6 **(As to Umpqua)**

7 34.

8 Plaintiff incorporates by reference the allegations contained in the preceding paragraphs
9 as if fully set forth at length herein.

10 35.

11 Upon information and belief, Umpqua inspected the fire suppression system on the
12 machine on or about February 21, 2020.

13 36.

14 The fire suppression system of the machine did not activate on the date of the fire,
15 February 26, 2020.

16 37.

17 Umpqua failed to properly inspect the machine roughly five days before the date of the
18 fire, in failing to either confirm the presence of heat-retardant sleeves and/or black zip ties to
19 fasten the relevant detection line(s).
20

21 38.

22 In acting as the certified inspector and servicer of the fire suppression system, Umpqua
23 had a duty to ensure that the fire suppression system was in proper working order, was
24 reasonably fit to work as designed, and to perform said inspection in accordance with prevailing
25 custom in the industry.
26

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WARRANTY 4533MI

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39.

In failing to confirm the presence of heat-retardant sleeves and/or that the relevant detection line was fastened with black zip ties, and/or by failing to advise Douglas County of the implications of these failures, Umpqua breached its duty to Douglas County.

40.

The negligent, careless, and reckless acts and/or omissions of Umpqua, acting by and through its agents, servants, representatives, and/or employees, caused and/or exacerbated the fire and/or damages in the following ways:

- f. Failing to ensure that all relevant fire hoses and detection lines for the fire suppression system contained heat-retardant sleeves;
- g. Failing to ensure that all relevant fire hoses and detection lines to the machine were properly fastened with black zip ties;
- h. Failing to advise Douglas County that the fire suppression system did not properly contain either heat-retardant sleeves and/or was fastened by black zip ties;
- i. Improperly certifying the fire suppression system as being properly installed and reasonably fit for its intended use, given its failure to ensure that there were heat-retardant sleeves installed on the system, and/or that the relevant hoses were fastened with black zip ties; and
- j. Otherwise failing to act in a proper manner and use due care under the circumstances with regard to the inspection of the fire suppression system as detailed above, and in contravention of all relevant codes and regulations, including NFPA 17 and Chapter 9 of the Oregon Fire Code.

41.

As a direct and proximate result of Umpqua's negligence, as fully set forth in paragraph 40, Douglas County sustained damage and destruction of its business personal property to the machine in an amount in excess of \$351,046.79.

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1 42.

2 Pursuant to its policy with Douglas County, Arch paid in excess of \$351,046.79 for
3 damages stemming from the February 26, 2020 fire to the machine.

4 **COUNT V – BREACH OF CONTRACT**
5 **(As to Umpqua)**

6 43.

7 Plaintiff incorporates by reference the allegations contained in the preceding paragraphs
8 as if fully set forth at length herein.

9 44.

10 By invoice, dated February 28, 2020, Umpqua agreed to perform a full service and
11 inspection all on the machine. See Exhibit B.

12 45.

13 In failing to take the steps necessary to fully carry out its duties as a certified inspector of
14 the fire suppression system, and in failing to detect the absence of heat-retardant sleeves and
15 black zip ties, Umpqua breached its duty of care owed to Douglas under its agreement and failed
16 to conduct its inspection in accordance with custom in the industry.

17 46.

18 Based on Umpqua's breach of contract, Douglas County sustained significant damages to
19 its business personal property.

20 47.

21 Pursuant to its Policy with Douglas County, Arch paid in excess of \$351,046.79 for
22 damages stemming from the February 26, 2020 fire to the machine.

23 Page 10 – COMPLAINT FOR NEGLIGENCE, BREACH OF CONTRACT, BREACH OF
24 WARRANTY 4533MI
25
26

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COUNT VI – BREACH OF EXPRESSED OR IMPLIED WARRANTY
(As to Umpqua)

48.

Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as if fully set forth at length herein.

49.

Upon the completion of its service visit, Umpqua warranted that the machine was reasonably fit for its intended use, especially with regard to the propriety and efficacy of the fire suppression system.

50.

Umpqua breached its expressed or implied warranty for the reasons set forth in paragraph 40, which is incorporated herein by reference.

51.

Based upon Umpqua's breach of warranty, Douglas sustained significant damages to its business personal property.

52.

Pursuant to its policy with Douglas County, Arch paid in excess of \$351,046.79 for damages stemming from the February 26, 2020 fire to the machine.

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SMITH FREED EBERHARD, P.C.

Trial Attorney:
Jeffrey D. Eberhard, OSB No. 872132

Page 12 – COMPLAINT FOR NEGLIGENCE, BREACH OF CONTRACT, BREACH OF WARRANTY 4533MI

Exhibit 1 - Page 12 of 15

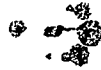
Sheet 1

Douglas County Forest Products
Machine: Wagner L80 F S/n 105438
Customer has decided to keep the engine

reman Clark torque converter
New converter drive ring
Reman Transmission 1 year 1000 hrs
Swap to L90 Drive axle
New drive wheels
L90 axle includes rebuilt plantiers new bearings.seals,new rotors,rebuilt calipers new brake pads
Repair all hand rail
Repair all steps and ladders
Rebuild Tilt cylinders
Rebuild Hold down cylinders
Rebuild Kicker cylinders
Rebuild steering cylinders
Rebuild hold down arms
Rebuild kicker Arms
Replace boom bushings 6 total
Replace carriage bushings 12 total
Paint and decal Machine
Rebuild both hold down kicker valve bodies
Rebuild Hoist tilt valve body
rebuild Dan foss steering amplifier
rebuild Dan foss orbital
Replace tail post axle bearings and seals
Replace top and bottom tail post bearings with seal
2 new Tires 23.5 25 Customer to supply
2 new Tires 33.5 33 Customer to supply
Repair wiring to factory spec
Replace all door mechanisms
New cab floor mat
New cab insulation
New a/c heater unit
Paint inside of cab
2 New cab fans
2 rebuilt Master cylinder
2 rebuilt boosters
2 New rotors
1 Air tank dry
2 Air tank wet
1 rebuilt Bendix air drier
1 New treadle valve
2 New r6 relay valves
10 lights n certified
Fire suppression certified
4 New hydraulic pumps
2 new air filters

Page 1

EXHIBIT A
PAGE 1 OF 2



Sheet 1

hydraulic oil 400 Gallons Recycle
engine oil 15 gallons
trans oil 15 gallons
coolant 25 gallons
Diff 90 weight 55 Gallons

Delivered to Roseburg Oregon

Terms for progress payments.

\$100,000.00 Non-refundable down payment

\$200,000.00 finish all front axle related work items to include brake system, and mounting of drive tire

Customer takes ownership of machine at this point


\$100,000.00 installation of reman torque and transmission

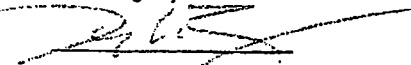
\$68,000.00 completion of all remaining work items

Machine ships to Douglas County Forest Products

\$52,000.00 final payment after delivery and customer acceptance

\$520,000.00 Total

J&B Logstackers
Joseph B Gillum
Signed 
Date 11/28/17

Douglas County Forest
John Blogett jr
Signed 
Date 12-1-17

Page 2

EXHIBIT A
PAGE 2 OF 2

Umpqua Valley Fire Services, Inc.
 dba A-1 Fire Protection
 1353 SE Pine Street
 Roseburg, OR 97470

Date	Invoice #
2/28/2020	6499232

Bill To
Douglas County Forest Products P O Box 848 Winchester, OR 97495

Ship To
Douglas County Forest Products 398 Del Rio Rd Roseburg, OR 97471

P.O. Number	Terms	Due Date	Rep	Ship	Work Acknowledgement #		
	Net 30	3/29/2020	BB	2/28/2020	18168456		
Quantity	Item Code	Description			Price Each	Class	Amount
1	Misc Service	Vehicle Off-Road Fire System Service			175.00	Sys Service	175.00
3	Misc. Parts	Ansul Off-Road Nozzle Cap			10.00	Sys Parts	30.00
3	AME B417T	2.5#ABC Fire Extinguisher			44.95	FX Service	134.85
1	Monthly	Monthly Fire Extinguisher Inspection			100.00	FX Service	100.00
All balances are due on a Net 15 Days, unless other arrangements have been made. Any remaining balances over 30 days will be subject to a 18% finance charge.					Total \$439.85		
					For your convenience, we accept Visa and Master Card payments.		
Phone #		541-229-0911, 541-726-7287					

EXHIBIT B
 PAGE 1 OF 1